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Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2009-4971

BRETA GETAN DURHAM
2043 N. Mar Vista Street
Altadena, CA 91001

A C C U S A T I O N

Vocational Nurse License No. VN 168593

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about August 16, 1994, the Board of Vocational Nursing and Psychiatric Technicians (Board) issued Vocational Nurse License No. VN 168593 to Breta Getan Durham (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 490 provides, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

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1 7. Section 2878 provides, in pertinent part:

2 "The Board may suspend or revoke a license issued under this chapter [the Vocational
3 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

4 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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6 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violating of, or conspiring to violate any provision or term of this chapter.

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9 "(f) Conviction of a crime substantially related to the qualifications, functions, and duties
10 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
11 evidence of the conviction.

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13 "(j) The commission of any act involving dishonesty, when that action is related to the
14 duties and functions of the licensee."

15 8. Section 2878.5 provides, in pertinent part:

16 In addition to other acts constituting unprofessional conduct within the meaning of this
17 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed
18 under this chapter to do any of the following:

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20 "(b) Use any controlled substance as defined in Division 10 of the Health and Safety
21 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
22 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
23 extent that the use impairs his or her ability to conduct with safety to the public the practice
24 authorized by his or her license.

25 "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
26 drug, or the prescription, consumption, or self-administration of any of the substances described
27 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
28 conclusive evidence thereof."

1 **REGULATORY PROVISIONS**

2 9. California Code of Regulations, title 16, section 2521, provides, in pertinent part:

3 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
4 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
5 considered to be substantially related to the qualifications, functions or duties of a licensed
6 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed
7 vocational nurse to perform the functions authorized by his license in a manner consistent with
8 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those
9 involving the following:

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11 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the
13 Business and Professions Code."

14 **COST RECOVERY**

15 10. Section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licensee found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Convictions of Substantially-Related Crimes)**

21 11. Respondent is subject to disciplinary action under sections 490, and 2878, subdivision
22 (f), in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent
23 was convicted of crimes that are substantially related to the qualifications, functions, and duties of
24 a vocational nurse as follows:

25 a. On or about July 20, 2011, after pleading *nolo contendere*, Respondent was convicted
26 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving a
27 vehicle while having 0.08% and more, by weight, of alcohol in blood], in the criminal proceeding
28 entitled *The People of the State of California v. Breta Durham* (Super. Ct. Los Angeles County,

2010, No. 0PS78608). The court sentenced Respondent to 13 days in jail, placed her on probation for a period of 36 months, and fined her. The circumstances surrounding the conviction are that on or about June 09, 2010, a California Highway Patrol Officer was dispatched to investigate a traffic collision. During the investigation with Respondent, the officer observed Respondent to have objective signs of alcohol intoxication. The officer could smell a distinct smell of an alcoholic beverage emitting from Respondent's person and breath. The officer also observed Respondent to have an unsteady walk, slow, slurred speech, and difficulty maintaining her balance. Respondent admitted to the officer that she had consumed, "half a glass of wine." Respondent agreed to a series of field sobriety test which she failed to complete satisfactorily. Respondent subsequently consented to two breath tests with results of .15% BAC and .15% BAC.

b. On or about June 19, 2007, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Penal Code section 273a, subdivision (b) [willful cruelty to a child], in the criminal proceeding entitled *The People of the State of California v. Breta Durham* (Super. Ct. Los Angeles County, 2007, No. 7PS6165901). The court sentenced Respondent to 4 days in jail, and placed her on probation for a period of 4 years. The circumstances surrounding the conviction are that on or about June 17, 2007, Respondent was caring for and had custody of a child who was under eight years of age, who she willfully assaulted by means of force, that to a reasonable person would be likely to produce great bodily injury, resulting in the child becoming comatose due to brain injury.

c. On or about August 25, 2006, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving a vehicle while having 0.08% and more, by weight, of alcohol in blood], in the criminal proceeding entitled *The People of the State of California v. Breta Durham* (Super. Ct. Los Angeles County, 2006, No. 6PS51544). The court placed Respondent on probation for a period of 3 years, ordered Respondent to complete a 3 month Licensed First-Offender Alcohol and Other Drug Education and Counseling Program, to complete a 6 month child protective service program, and fined her. The circumstances surrounding the conviction are that on or about June 26, 2006, Respondent was found driving a vehicle while having 0.08% and more, by weight, of

1 alcohol in her blood.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Dangerous Use of Drugs and/or Alcohol)**

4 12. Respondent is subject to disciplinary action under sections 2878.5 subdivisions (b)
5 and (c), in conjunction with California Code of Regulations, title 16, subdivision (f), in that
6 Respondent was found to be driving a vehicle while having 0.08% and more, by weight, of
7 alcohol in his blood on July 20, 2011, and on June 26, 2006. Complainant refers to, and by this
8 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) and (c),
9 inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Convictions of Drug/Alcohol Related Crimes)**

12 13. Respondent is subject to disciplinary action under sections 2878, subdivision (a), and
13 2878.5, subdivision (c), in conjunction with California Code of Regulations, title, 16, section
14 2521, subdivision (f), in that Respondent was convicted of crimes involving the use,
15 consumption, or self-administration of alcoholic beverages. Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) and (c),
17 inclusive, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Abstain from Chemical/Substance Abuse)**

20 14. Respondent is subject to disciplinary action under section 2878, subdivision (a), in
21 that Respondent failed to abstain from chemical/substance abuse when he was found to be under
22 the influence of an alcoholic beverage on July 20, 2011, and June 26, 2006. Complainant refers
23 to, and by this reference incorporates, the allegations set forth above in paragraph 11,
24 subparagraphs (a) and (c), inclusive, as though set forth fully.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board issue a decision:

- 28 1. Revoking or suspending Vocational Nurse License No. VN 168593, issued to Breta

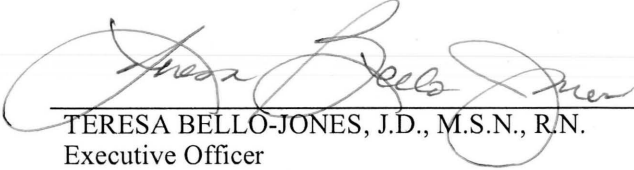
1 Getan Durham;

2 2. Ordering Breta Getan Durham to pay the Board the reasonable costs of the
3 investigation and enforcement of this case, pursuant to Business and Professions Code section
4 125.3; and

5 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

NOV 13 2012


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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